



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl OP(MD)Nos.4749 & 7591 of 2016

and

Crl MP(MD)No.5351 of 2019 in Crl OP(MD)No.7591 of 2016,
2363 of 2016 in Crl OP(MD)No.4749 of 2016

Kathiravan ... Petitioner in both petitions

Vs.

Kumara Murugesan ... Respondent in Crl OP(MD)No.4749 of 2016

S.Jeya Prakash ... Respondent in Crl OP(MD)No.7591 of 2016

Common Prayer : Criminal Original Petitions are filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to C.C Nos.9 and 62 of 2016 on the file of the learned Judicial Magistrate, Valliyoor and quash the same.

In both cases

For Petitioner : Mr.R.Sundar Srinivasan

For Respondents : Mr.S.Palani Velayutham

COMMON ORDER

The petitioner in these two criminal original petitions is one and the same. The respondents are of course different. Both arise under Section 138 of the Negotiable Instruments Act, 1881. The case of the petitioner is that he lost his cheque book and the same was misused. The petitioner's counsel took me through the materials enclosed in the typed set of papers to show that the impugned proceedings constitute an abuse of legal process.

2.Though the contentions of the petitioner's counsel are attractive, I am afraid that I will have to undertake a factual investigation in the matter to give relief in these cases. The Hon'ble Supreme Court has often reminded the High Courts that while exercising the jurisdiction under Section 482 of Cr.PC, the High Courts should not undertake the exercise of appreciating the facts. These cases will have to necessarily dismiss these petitions.



They are accordingly dismissed. It is made clear that all the contentions and defences of the petitioner are left open.

3.However, taking note of the facts and circumstances of the case, the personal appearance of the petitioner before the court below is dispensed with. The learned Trial Judge shall not insist the personal appearance of the petitioner unless it is necessary or imperative. Of course, on all other occasions, he will have to be represented by his counsel.

4.The learned counsel for the petitioner stated that even though interim stay was originally granted in Crl OP(MD)No.4749 of 2016, in view of the decision of the Hon'ble Supreme Court reported in **(2018) 3 SCC 594 (Asian Resurfacing of Road Agency Pvt. Ltd., Vs. Central Burueau of Investigation)**, the trial had commenced and the chief examination of the prosecution witnesses is also closed. Therefore, he wants this Court to permit the petitioner to apply for recall of PWs so that he can cross examine them.

5.I find the said request to be reasonable. Presumption is drawn against the petitioner under Section 139 of the Negotiable Instruments Act. He has to necessarily discharge the same. That he can do only by cross examining the prosecution witnesses. Since trial had commenced in view of the aforesaid decision of the Hon'ble Supreme Court, the petitioner is to be given an opportunity of cross examination of the prosecution witnesses. The petitioner states that within a period of two weeks from the date of receipt of a copy of this order, he will file a petition under Section 313 of Cr.PC. The court below shall allow the same.

6.These criminal original petitions are dismissed with the above observations. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Skm

To

The Judicial Magistrate, Valliyoor.



CrI OP(MD)Nos.4749 & 7591 of 2016.

+2 CC to M/s.R.SUNDAR SRINIVASAN, Advocate (SR-75[F] dated 03/01/2020)

+1 CC to M/s.S.PALANIVELAYUTHAM, Advocate (SR-225[F] dated 03/01/2020)

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